

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

| | | | |
|--|--|--|---------------------|
| (1) DEPARTMENT Public Works | (2) MEETING DATE 4/19/2016 | (3) CONTACT/PHONE Glenn Marshall, Development Services Engineer (805) 781-1596 | |
| (4) SUBJECT Request to authorize a budget adjustment in the amount of \$4,000,000 from performance bond proceeds, to reimburse costs of construction of subdivision improvements for Tract 2388 Spanish Springs, Price Canyon Rd near Pismo Beach. District 3. | | | |
| (5) RECOMMENDED ACTION It is recommended that the Board: 1. Authorize a budget adjustment in the amount of \$4,000,000 from performance bond proceeds, to reimburse costs of construction of subdivision improvements for Tract 2388, by a 4/5 vote; and 2. Direct the Auditor-Controller to roll forward any unspent appropriation to subsequent fiscal years. | | | |
| (6) FUNDING SOURCE(S) Development Services Bond Claim Proceeds | (7) CURRENT YEAR FINANCIAL IMPACT \$4,000,000 | (8) ANNUAL FINANCIAL IMPACT N/A | (9) BUDGETED? No |
| (10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____) | | | |
| (11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A | | | |
| (12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) 19001639 | | (13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: 1516127 <input checked="" type="checkbox"/> 4/5 Vote Required <input type="checkbox"/> N/A | |
| (14) LOCATION MAP Attached | (15) BUSINESS IMPACT STATEMENT? No | (16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____ | |
| (17) ADMINISTRATIVE OFFICE REVIEW David E. Grim | | | |
| (18) SUPERVISOR DISTRICT(S) District 3 | | | |

Reference: 16APR19-C-9

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Glenn Marshall, Development Services Engineer

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 4/19/2016

SUBJECT: Request to authorize a budget adjustment in the amount of \$4,000,000 from performance bond proceeds, to reimburse costs of construction of subdivision improvements for Tract 2388 Spanish Springs, Price Canyon Rd near Pismo Beach. District 3.

RECOMMENDATION

It is recommended that the Board:

1. Authorize a budget adjustment in the amount of \$4,000,000 from performance bond proceeds, to reimburse costs of construction of subdivision improvements for Tract 2388, by a 4/5 vote; and
2. Direct the Auditor-Controller to roll forward any unspent appropriation to subsequent fiscal years.

DISCUSSION

The Spanish Springs subdivision, Tract 2388, is located on Price Canyon Road approximately 1.5 miles northerly from the City of Pismo Beach (see Vicinity Map). The project is a subdivision of rural lands/agriculturally zoned property into 16 parcels ranging in size from 20.0 to 28.7 acres, a 470 acre agricultural parcel, and a 204 acre remainder parcel. On August 8, 2002, the project received vesting tentative map approval from the County Planning Commission. On January 8, 2004, a reconsideration to modify road improvement conditions; and to allow road abandonment and additional offers of dedication was approved by the Planning Commission.

The final map was recorded with the County Clerk-Recorder on June 23, 2005 in Book 26, Page 58 of Maps. Prior to map recordation the developer entered into a subdivision agreement and posted a performance bond with the County because the subdivision improvements had not been completed. Subdivision agreement and performance bonds are allowed under Government Code 66499 et seq. and Section 21.50.040 of the County Code to guarantee completion of uncompleted project conditioned improvements.

The developer of the Spanish Springs subdivision has defaulted on the completion of the subdivision improvements as conditioned with the approval of the vesting tentative tract map. A claim on the performance bond has resulted in proceeds now being available to complete these improvements to the satisfaction of the Public Works Department.

The agreement required subdivision improvements to be completed on or before February 7, 2006. Towards mid-2007 ongoing work to complete the improvements significantly decreased possibly due to the economic downturn. Time extensions were provided to the owners based on their good-faith efforts. However, on January 15, 2015, the owners were no longer able to meet the conditions for further time extensions and the county found it necessary to make a demand on the surety company to either forfeit the performance bonds to the county or complete the subdivision improvements. On November 4, 2015 a settlement agreement was entered into between the Surety and County that resolved the county's claim on the performance bonds.

The current owner of the Spanish Springs subdivision, Virtual Reality Enterprises, Inc. ("VRE"), filed a lawsuit against the County regarding use of the performance bond settlement proceeds. A settlement agreement was entered into between VRE and the County on March 9, 2016, whereby the County agreed to reimburse VRE up to \$4,000,000 for VRE's costs to complete all subdivision improvements.

Staff is requesting your Board appropriate \$4,000,000 of the total settlement proceeds of \$5,000,000 to be transferred to Public Works and used to reimburse costs up to \$4,000,000 for construction of the subdivision improvements. The remaining work includes construction of offsite Price Canyon Road widening improvements, and completion of all onsite roads; drainage, dry utilities, community water system, and related appurtenances. The remaining \$1,000,000 of settlement proceeds shall remain in a segregated account until a future appropriation is requested.

It is anticipated that the subdivision improvements will not be completed until the 2018-19 fiscal year. To fund this time schedule, staff is also requesting that your Board direct the Auditor-Controller to roll forward any unspent appropriation to subsequent fiscal years.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel prepared the settlement agreements and has assisted in and reviewed steps toward the recommended action. The Department of Planning and Building processed the subdivision applications and public hearings in accordance with County and State laws.

FINANCIAL CONSIDERATIONS

The requested amount from settlement proceeds is \$4,000,000 and it is anticipated the entire \$4,000,000 will be needed to reimburse costs for construction of the subdivision improvements to the satisfaction of the County.

A budget adjustment is required to appropriate \$4,000,000 of the settlement proceeds and initiate reimbursement of costs of construction to complete the Tract 2388 subdivision improvements. Funds will be placed in a specific trust account for us on Tract 2388 improvements. It is anticipated these funds will be fully utilized for reimbursement of the costs of the improvements and will likely proceed as a multi-year project.

RESULTS

The results of considering this request will include your determination on appropriating performance bond proceeds for projects where the developer has defaulted on its obligations to complete improvements, thus promoting a well-governed community.

ATTACHMENTS

1. Vicinity Map
2. Exhibit A – Project Cost Estimates

File: TR 2388

Reference: 16APR19-C-9

L:\DevServ\2016\APRIL\BOS\TR 2388\TR 2388 Budget Adjustmt. NN.revised.3.22.doc GM.mj